

1 **STEPHEN L. JOSEPH (SBN 189234)**  
2 350 Bay Street, Suite 100-328  
3 San Francisco, CA 94133  
4 Telephone: (415) 577-6660  
5 Facsimile: (415) 869-5380  
6 E-mail: savetheplasticbag@earthlink.net

7 Attorney for Petitioner  
8 **SAVE THE PLASTIC BAG COALITION**

**FILED**

**FEB 24 2011**

**KIM TURNER, Court Executive Officer**  
**MARIN COUNTY SUPERIOR COURT**  
By: D. Taylor, Deputy

9  
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **FOR THE COUNTY OF MARIN**

12 **SAVE THE PLASTIC BAG COALITION,**  
13 **an unincorporated association,**

14 **Petitioner,**

15 **v.**

16 **COUNTY OF MARIN, a political subdivision**  
17 **of the State of California; MARIN COUNTY**  
18 **DEPARTMENT OF AGRICULTURE,**  
19 **WEIGHTS & MEASURES, an agency of the**  
20 **County of Marin; and DOES 1-100, inclusive,**

21 **Respondents.**

) Case No. **C11100996**

)  
) **VERIFIED PETITION FOR WRIT OF**  
) **MANDATE UNDER THE CALIFORNIA**  
) **ENVIRONMENTAL QUALITY ACT;**  
) **REQUEST FOR PRELIMINARY**  
) **INJUNCTION; REQUEST FOR**  
) **DECLARATORY RELIEF**

22 **Petitioner, SAVE THE PLASTIC BAG COALITION, alleges as follows:**

23 **PARTIES AND JURISDICTION**

24 1. **Petitioner SAVE THE PLASTIC BAG COALITION is an unincorporated**  
25 **association.**

26 2. **Respondent COUNTY OF MARIN (the "County") is a political subdivision of**  
27 **the State of California.**

28 3. **Respondent MARIN COUNTY DEPARTMENT OF AGRICULTURE,**  
**WEIGHTS & MEASURES (the "Department") is an agency of the County.**

4. **This is an action seeking a writ of mandate to set aside, void, annul, repeal, and**

1 terminate implementation and enforcement of Marin County Ordinance No. 3553 "regulating  
2 retail establishments provision of single use carryout bags" (the "Ordinance") that was adopted  
3 by the County Board of Supervisors (the "Board") on January 25, 2010. A true and correct copy  
4 of the Ordinance is attached hereto as Exhibit A and incorporated herein by reference.

5 5. The Ordinance provides that on and after January 1, 2012, "stores" (as defined in  
6 the Ordinance) may not provide plastic carryout bags ("plastic bags") to consumers and must  
7 charge at least 5 cents for paper carryout bags ("paper bags").

8 6. The Ordinance is a "project" subject to CEQA. (CEQA Guidelines  
9 §15378(a)(1).)

10 7. The County violated the California Environmental Quality Act ("CEQA") by  
11 failing to complete and certify an EIR prior to adopting the Ordinance.

12 8. The County is the lead agency for the project, responsible for compliance with  
13 CEQA, including but not limited to preparation of an Environmental Impact Report ("EIR").

14 9. The Ordinance states that the Department is responsible for its implementation  
15 and enforcement.

16 10. Petitioner is ignorant of true names and capacities of DOES named herein as  
17 DOES 1-100, inclusive, and therefore sues said Respondents by such fictitious names.  
18 Petitioner will amend this Petition to allege their true names and capacities when ascertained.  
19 Petitioner is informed and believes and thereon alleges that each of these fictitiously named  
20 Respondents were, and continue to be, responsible in some manner for the acts or omissions  
21 herein alleged.

22 11. The DOE Respondents include, but are not limited to, any and all of the cities  
23 and towns in the County that adopt ordinances or other measures as part of or pursuant to the  
24 project without first completing and certifying an EIR, including but not limited to the City of  
25 San Rafael.

26 12. Petitioner is informed and believes that at all times relevant to the allegations  
27 herein, each Respondent, including the DOE Respondents, were the employees, agents, or  
28 partners of each of the other Respondents, and were at all times acting within the purpose and

1 scope of their, agency or partnership, or at the direction of the other Respondents.

2 13. This Court has jurisdiction over the matters alleged in this Petition pursuant to  
3 Code Civ. Proc. §1085, and/or §1094.5, and Pub. Res. Code §21167.

4 14. Venue is proper in this Court under Code Civ. Proc. §394(a).

5 **STANDING**

6 15. Petitioner is a non-profit environmental campaign organization that was formed  
7 on June 3, 2008.

8 16. Petitioner was formed and exists for the purpose of responding to environmental  
9 misinformation about plastic bags and ensuring that the environmental impacts of banning  
10 plastic bags are made known to decision-makers and the public, in the public interest.

11 17. Environmental misinformation about plastic bags is a serious problem that  
12 impacts the decision-making process about whether to ban plastic bags. An editorial in *The*  
13 *Times* (London) published on March 8, 2008 states:

14 "There is a danger that the green herd, in pursuit of a good cause,  
15 stumbles into misguided campaigns.... Analysis without facts is  
16 guesswork. Sloppy analysis of bad science is worse. Poor interpretation  
17 of good science wastes time and impedes the fight against obnoxious  
18 behavior. There is no place for bad science, or weak analysis, in the  
19 search for credible answers to difficult questions.... Many of those who  
20 have demonized plastic bags have enlisted scientific study to their cause.  
21 By exaggerating a grain of truth into a larger falsehood, they spread  
22 misinformation and abuse the trust of their unwitting audiences."

23 18. David Laist, a senior policy analyst with the federal Marine Mammal  
24 Commission, has stated:

25 "In their eagerness to make their case [against plastic bags], some of the  
26 environmental groups make up claims that are not really supportable."

27 19. The Chief Scientist of the Scripps 20-day expedition to study marine debris in  
28 the Pacific Ocean including plastic bags has stated:

"Misinformation on this issue is rampant."

20. As a result of such misinformation, plastic bags have become a matter of  
significant public concern.

21. The County is guilty of spreading environmental myths and misinformation

1 about plastic bags. Three examples are given below.

2 22. The first example is a letter dated December 7, 2010 from the Department to the  
3 Board regarding the proposed Ordinance which states as follows:

4 "On April 25, 2007, the SW-JPA AB 939 Local Task Force report cited  
5 plastic bags as a major solid waste issue in Marin. It reported that plastic  
6 bags had no recycling markets, took 500 years to decompose, and posed  
7 a hazard to the environment as bag litter is '... responsible for the death  
8 of a million sea birds and 100,000 marine mammals annually  
9 worldwide.'"

10 23. In fact, the allegation that 100,000 sea mammals and a million seabirds are killed  
11 each year by plastic bags is untrue. An article in *The Times* (London) in an article published on  
12 March 8, 2008 states:

13 "Scientists and environmentalists have attacked a global campaign to ban  
14 plastic bags which they say is based on flawed science and exaggerated  
15 claims.

16 The widely stated accusation that the bags kill 100,000 animals and a  
17 million seabirds every year are false, experts have told *The Times*. They  
18 pose only a minimal threat to most marine species, including seals,  
19 whales, dolphins and seabirds....

20 They "don't figure" in the majority of cases where animals die from  
21 marine debris, said David Laist, the author of a seminal 1997 study on  
22 the subject. Most deaths were caused when creatures became caught up  
23 in waste produce. "Plastic bags don't figure in entanglement," he said.  
24 "The main culprits are fishing gear, ropes, lines and strapping bands.  
25 Most mammals are too big to get caught up in a plastic bag."

26 He added: "The impact of bags on whales, dolphins, porpoises and seals  
27 ranges from nil for most species to very minor for perhaps a few species.  
28 For birds, plastic bags are not a problem either."

The central claim of campaigners is that the bags kill more than 100,000  
marine mammals and one million seabirds every year. However, this  
figure is based on a misinterpretation of a 1987 Canadian study in  
Newfoundland, which found that, between 1981 and 1984, more than  
100,000 marine mammals, including birds, were killed by discarded nets.  
The Canadian study did not mention plastic bags.

Fifteen years later in 2002, -when the Australian Government  
commissioned a report into the effects of plastic bags, its authors  
misquoted the Newfoundland study, mistakenly attributing the deaths to

1 "plastic bags".

2 The figure was latched on to by conservationists as proof that the bags  
3 were killers. For four years the "typo" remained uncorrected. It was only  
4 in 2006 that the authors altered the report, replacing "plastic bags" with  
5 "plastic debris". But they admitted: "The actual numbers of animals  
6 killed annually by plastic bag litter is nearly impossible to determine."

7 In a postscript to the correction they admitted that the original Canadian  
8 study had referred to fishing tackle, not plastic debris, as the threat to the  
9 marine environment.

10 Regardless, the erroneous claim has become the keystone of a widening  
11 campaign to demonise plastic bags.

12 David Santillo, a marine biologist at Greenpeace, told The Times that  
13 bad science was undermining the Government's case for banning the  
14 bags. "It's very unlikely that many animals are killed by plastic bags," he  
15 said. "The evidence shows just the opposite. We are not going to solve  
16 the problem of waste by focusing on plastic bags...."

17 A 1968 study of albatross carcasses found that 90 per cent contained  
18 some form of plastic but only two birds had ingested part of a plastic  
19 bag.

20 Professor Geoff Boxshall, a marine biologist at the Natural History  
21 Museum, said: "I've never seen a bird killed by a plastic bag. Other  
22 forms of plastic in the ocean are much more damaging. Only a very  
23 small proportion is caused by bags."

24 24. The U.S. National Oceanic and Atmospheric Administration states as follows:

25 Question: "Is it true that 100,000 marine mammals and/or sea turtles die  
26 each year due to marine debris/plastics/plastic bags?"

27 Answer: "We were able to find no information to support this statement.  
28 An erroneous statement attributing these figures to plastic bags was  
published in a 2002 report published by the Australian Government; it  
was corrected in 2006."

Question: "Is it true that marine debris kills a million seabirds each  
year?"

Answer: "This statement is currently unknown. We are so far unable to  
find a scientific reference for this figure. The closest we have found is  
"214,500 to 763,000 seabirds are killed annually incidental to driftnet  
fishing by Japanese fishermen in the North Pacific Ocean (US

1 Department of Commerce, 1981)” from Laist, 1987.”

2 25. The second example is in the same letter where the Department cites a local  
3 report that “plastic bags had no recycling markets.”

4 26. In fact plastic bags are readily recyclable in Marin County and throughout  
5 California by being deposited in plastic bag recycling bins that are required to be located at all  
6 supermarkets and other AB 2449 stores. (Pub. Res. Code §§42250-57.) Under AB 2449, which  
7 was enacted into law in 2006 and took effect in July 2007, “all plastic bags collected by the  
8 store shall be collected, transported, and recycled in a manner that does not conflict with the  
9 local jurisdiction's source reduction and recycling element.” There are many markets for  
10 recycled plastic bags deposited in the bins, including Trex, AERT, and Hilex. The County is by  
11 its own action making plastic bags non-recyclable by banning plastic bags, because stores that  
12 do not provide plastic bags may remove the plastic bag recycling bins. (Pub. Res. Code §§  
13 42250(e), 42251, 42252.)

14 27. The third example is a Marin County Bring Your Own Bag leaflet about plastic  
15 bags that is part of the County's document appendix in support of the Ordinance. BYOB Marin,  
16 which issued the leaflet as part of its anti-plastic bag campaign, is a project of the County,  
17 EcoMom Alliance, Green Sangha, iReuse and Teens Turning Green. The leaflet states as  
18 follows:

19 “Certain chemicals found in plastics (especially BPA, phthalates, PFOA,  
20 PFOs, polystyrene, and additives such as antimony, cadmium, and lead)  
21 are associated with a who's who of modern disorders, including asthma,  
22 cancer, diabetes, obesity, premature puberty, and reproductive failure.”

22 28. In fact plastic bags do not contain any of those chemicals.

23 29. Petitioner is the only organization that has responded to the above instances of  
24 misinformation by the County. (See Exhibit B attached hereto.) Other “environmental  
25 organizations” have remained silent.

26 30. Petitioner performs a crucial and indispensable role in ensuring that  
27 environmental truth is not compromised or lost when environmental initiatives are being  
28 considered by public agencies.

31. Petitioner's members include U.S. citizens and California companies involved in

1 plastic bag manufacturing and distribution. Three such companies are Grand Packaging, Inc.  
2 doing business as "Command Packaging", Crown Poly, Inc., and Elkay Plastics Co., Inc. They  
3 were incorporated in California are in good standing. They have been members of Petitioner  
4 since 2008.

5 32. Chandler Hadraba is a U.S. citizen. He has been a member of Heal the Bay since  
6 August 2008. Heal the Bay is one of the leading organizations campaigning for the banning of  
7 plastic bags. He has been a member of Petitioner since September 2008. He became a member  
8 of Petitioner because he was concerned about the environmental misinformation being  
9 disseminated by anti-plastic bag activists, including Heal the Bay. He has no financial stake in  
10 the outcome of this litigation.

11 33. Petitioner and all of Petitioner's members are "persons" entitled to file an action  
12 under CEQA. "Person" includes any person, firm, association, organization, partnership,  
13 business, trust, corporation, limited liability company, company. (CEQA Guidelines §15376.)

14 34. Petitioner has demanded that California cities and counties complete and certify  
15 EIRs before banning plastic bags.

16 35. Petitioner maintains a website at [www.savetheplasticbag.com](http://www.savetheplasticbag.com) to respond to  
17 environmental misinformation about plastic bags and to address the environmental impacts of  
18 plastic, paper, and reusable bags, for the benefit of decision-makers and the public.

19 36. According to CEQA Guidelines §15002, the "basic purposes of CEQA" include  
20 the following:

21 A. Inform governmental decision-makers and the public about the potential,  
22 significant environmental effects of proposed activities.

23 B. Identify the ways that environmental damage can be avoided or significantly  
24 reduced.

25 C. Prevent significant, avoidable damage to the environment by requiring changes  
26 in projects through the use of alternatives or mitigation measures when the governmental  
27 agency finds the changes to be feasible.

28 D. Disclose to the public the reasons why a governmental agency approved the

1 project in the manner the agency chose if significant environmental effects are involved.

2 37. Petitioner seeks to promote and enforce the aforementioned informational  
3 purposes of CEQA in this action. Ascertaining the true facts about the environmental impacts of  
4 projects and informing and disclosing those true facts to decision-makers and the public are  
5 purposes that are within the zone of interests CEQA was intended to preserve and protect.

6 38. The question in this action is one of public right and the object of the action is to  
7 enforce a public duty in the public interest.

8 39. Petitioner is interested as a citizen in having the public laws including CEQA  
9 executed and the public duties and purposes in CEQA enforced.

10 40. Petitioner has a genuine and continuing interest in and concern for  
11 environmental matters including environmental truth and for compliance with the CEQA  
12 process.

13 41. Petitioner has a commitment to the subject matter of the public right being  
14 asserted.

15 42. Petitioner coalition consists of or represents individuals beneficially  
16 interested in this action who would find it difficult or impossible to seek vindication of their  
17 own rights. No citizen who did not have the financial support of business interests could  
18 reasonably be expected to incur the substantial cost of litigating against the County to enforce  
19 CEQA. This is due to the fact that the environmental damage caused by increased distribution  
20 of paper bags and reusable bags is general, widespread and universal rather than particularized  
21 to particular persons or locations. Further, much of the environmental damage is caused outside  
22 the County.

23 43. Broad and long-term environmental effects are involved when plastic bags are  
24 banned. The environmental impacts include, but are not limited to, increased greenhouse gas  
25 emissions and increased air and water pollution.

26 44. Prosecution of this action as a citizen's suit by Petitioner does not conflict with  
27 other competing legislative or public policies.

28 45. Standing serves the important public policy in CEQA of disclosure of



1 environmental impacts to decision makers and the public.

2 46. There is an overriding public policy in this state “guaranteeing citizens the  
3 opportunity to ensure that no governmental body impairs or defeats the purpose of legislation  
4 establishing a public right.” (*Green v. Obledo* (1981) 29 Cal.3d 126, 144.)

5 47. Petitioner has standing as an association to bring this action, because (i) its  
6 members would otherwise have standing to sue on their own behalf; (ii) the interests Petitioner  
7 seeks to protect in this lawsuit are germane to the organization’s purpose; and (iii) neither the  
8 claims asserted herein, nor the relief requested, require participation of the members in this  
9 lawsuit.

10 48. Loss of sales, damage to competitive interests, or other commercial or economic  
11 harm are not part of Petitioner’s claims in this action. This action is being prosecuted solely and  
12 exclusively for the protection of the environment in the public interest, including the promotion  
13 of environmental truth.

14 49. Petitioner complied with Pub. Res. Code § 21177(a) and (b) by filing the  
15 Objections attached hereto as Exhibit B.

16 50. Based on the foregoing, Petitioner has standing.

17 51. The Court of Appeal has confirmed that Petitioner has standing. (*Save The*  
18 *Plastic Bag Coalition v. City of Manhattan Beach* (2010) 181 Cal.App.4th 521.) That case is  
19 pending in the Supreme Court.

#### 20 **STATEMENT OF FACTS**

21 52. On December 14, 2010, the Board held its first reading of the draft Ordinance.  
22 At that time, it announced that it would hold a public hearing at its January 4, 2011 meeting.

23 53. On December 28, 2010, in accordance with Pub. Res. Code § 21177(a) and (b),  
24 Petitioner timely asserted and submitted objections to the project alleging grounds for  
25 noncompliance with CEQA, including failure to complete and certify an EIR, and objecting to  
26 approval of the project (“Objections”). A true and correct copy of the Objections is attached  
27 hereto as Exhibit B and incorporated herein by reference.

28 54. On January 4, 2011, the Board deferred the public hearing to its January 25,

1 2011 meeting.

2 55. On January 25, 2011, the Board held a meeting and public hearing. Petitioner  
3 reasserted its Objections at the public hearing in its oral statement by counsel.

4 56. On January 25, 2011, following the conclusion of the public hearing, the Board  
5 adopted the Ordinance, thereby banning plastic bags and requiring that stores charge at least a 5  
6 cents for paper bags, with effect from January 1, 2012.

7 57. The County did not complete an Initial Study or complete and certify an EIR  
8 prior to adopting the Ordinance.

9 **FIRST CAUSE OF ACTION**  
10 **AGAINST BOTH RESPONDENTS**  
11 **(CEQA – FAILURE TO COMPLETE AND CERTIFY AN EIR)**

12 58. Petitioner realleges and incorporates herein each and every allegation made  
13 above.

14 59. The Ordinance states as follows:

15 “WHEREAS, the use of single-use paper bags result in greater (GHG)  
16 emissions, atmospheric acidification, water consumption, and ozone  
17 production than single use plastic bags.”

18 60. The Ordinance also states that all types of bags, plastic, paper, and reusable,  
19 have “severe environmental impacts.”

20 61. The Ordinance will or might result in significant negative environmental impacts  
21 as a result of a switch by consumers to paper bags and reusable bags.

22 62. In the Objections attached hereto as Exhibit B, Petitioner made a fair argument  
23 that the Ordinance will or might result in significant negative environmental impacts as a result  
24 of a switch by consumers to paper bags and reusable bags. Based thereon, Petitioner demanded  
25 that the County complete and certify an EIR prior to adopting the Ordinance or any ordinance  
26 banning plastic bags.

27 63. Each and every point and objection made in the Objections attached hereto as  
28 Exhibit B is reasserted in support of this First Cause of Action as if fully restated herein.

64. Along with and as part of its Objections, Petitioner submitted the Franklin  
Report, the Scottish Report, the Boustead Report, and the ULS Report. All of these reports

1 constitute substantial evidence that paper bags are far worse for the environment than plastic  
2 bags.

3 65. The Scottish Report includes findings that the life cycle of paper bags results in:

- 4 • 3.3 times more emissions of greenhouse gases than plastic bags;
- 5 • 1.1 times more consumption of nonrenewable primary energy than plastic bags;
- 6 • 4.0 times more consumption of water than plastic bags;
- 7 • 1.9 times more acid rain than plastic bags;
- 8 • 1.3 times more negative air quality than plastic bags;
- 9 • 14.0 times more water body eutrophication than plastic bags; and
- 10 • 2.7 times more solid waste production than plastic bags.

11 66. The Scottish Report also includes the following finding:

12 “[A] paper bag has a more adverse impact than a plastic bag for most of  
13 the environmental issues considered. Areas where paper bags score  
14 particularly badly include water consumption, atmospheric acidification  
15 (which can have effects on human health, sensitive ecosystems, forest  
16 decline and acidification of lakes) and eutrophication of water bodies  
17 (which can lead to growth of algae and depletion of oxygen).”

18 67. Los Angeles County, the City of San Jose, and the City of Santa Monica have  
19 banned plastic bags. Prior to adopting their ordinances, they completed and certified EIRs. The  
20 EIRs included analyses of the minimum amount of a paper bag fee that would be required to  
21 offset the environmental impacts of paper bags.

22 68. Based on the EIRs, they have required in their ordinances that stores charge the  
23 following minimum fees for paper bags:

- 24 • Los Angeles County: 10 cents
- 25 • San Jose: 10 cents initially, automatically increasing to 25 cents in 2014
- 26 • Santa Monica: 10 cents

27 In contrast, Marin County’s Ordinance which was adopted without an EIR requires only a 5-  
28 cent minimum fee for paper bags.

69. Marin County Supervisor Charles McGlashan, who is spearheading the project,  
claimed in an interview with the Marinscope Newspaper published on January 12, 2011 and at

1 the Board meeting on January 25, 2011 that the lower fee is justified because it sends a "signal"  
2 to break "bad habits."

3 70. Sending such a "signal" does not eliminate the possibility that the Ordinance will  
4 or might result in significant negative environmental impacts as a result of a switch by  
5 consumers to paper bags.

6 71. Los Angeles County decided to impose a 10-cent fee on paper bags because a  
7 straight switch from plastic to paper bags could not be environmentally justified according to its  
8 EIR.

9 72. The Los Angeles County EIR determined that even a 10-cent fee on paper bags  
10 and promoting and distributing reusable bags would not be sufficient to ensure that there would  
11 be no significant negative environmental impacts caused by a shift from plastic to paper. The  
12 EIR states:

13 "Based on a conservative analysis, the County has determined that  
14 cumulative indirect [greenhouse gas] emissions resulting from  
15 implementation of the recommended ordinances will have the potential  
16 to result in significant unavoidable impacts even with implementation of  
17 [a paper bag fee and promotion and distribution of reusable bags], which  
18 will be expected to reduce significant adverse impacts to GHG emissions  
19 to the maximum extent feasible."

20 73. The Los Angeles County EIR determined that each and every polypropylene and  
21 cotton reusable bag distributed in Los Angeles County must be used at least 104 times before  
22 delivering environmental benefits compared to plastic bags.

23 74. As banning plastic bags, imposing a fee on paper bags, and promoting and  
24 distributing reusable bags would not avoid significant negative environmental impacts, the Los  
25 Angeles County Board of Supervisors on November 16, 2010 adopted a "Statement of  
26 Overriding Considerations" to enable adoption of its ordinance notwithstanding the findings in  
27 the EIR.

28 75. There are many deficiencies in the Los Angeles County EIR, including sweeping  
and inaccurate statements designed to justify a plastic bag ban. Petitioner objected to those  
deficiencies and continues to assert those objections. Nevertheless, Los Angeles County was  
unable to avoid acknowledging and conceding that its ordinance will or may have significant

1 negative environmental impacts, even with a 10-cent fee on paper bags.

2 76. The Los Angeles County EIR is substantial evidence that the Marin County  
3 Ordinance will or might result in significant negative environmental impacts as a result of a  
4 switch by consumers to paper bags.

5 77. The Los Angeles County EIR is substantial evidence that the Marin County  
6 Ordinance will or might result in significant negative environmental impacts as a result of a  
7 switch by consumers to reusable bags as it cannot be seen with certainty that all polypropylene  
8 and cotton reusable bags in Marin County will be used at least 104 times.

9 78. The Ordinance has a potential for resulting in either a direct physical change in  
10 the environment or a reasonably foreseeable indirect physical change in the environment and is  
11 therefore subject to CEQA. (Pub. Res. Code §21080(c), (d), §21151; CEQA Guidelines  
12 §15378(a).)

13 79. Pursuant to the California Environmental Quality Act ("CEQA"), the County  
14 was required to complete and certify and EIR before adopting the Ordinance. (Pub. Res. Code  
15 §21080(c), (d), §21151; Guidelines §15378(a).)

16 80. CEQA Guidelines §15061(b)(3) states: "Where it can be seen with certainty that  
17 there is no possibility that the activity in question may have a significant effect on the  
18 environment, the activity is not subject to CEQA." In this case, where the County has  
19 acknowledged in the Ordinance that "the use of single-use paper bags result in greater (GHG)  
20 emissions, atmospheric acidification, water consumption, and ozone production than single-use  
21 plastic bags," it cannot be seen with certainty that a 5-cent fee on paper bags or any other  
22 provision in the Ordinance ensures that the Ordinance will not have a significant negative effect  
23 on the environment.

24 81. The County has indicated that it might claim a categorical exemption under  
25 CEQA as the basis for not preparing an Initial Study or EIR. At the time of preparing this  
26 Petition, the County has made no official statement that it is relying on a categorical exemption  
27 and it has not filed a Notice of Exemption with the County Clerk or the State Clearinghouse  
28 pursuant to CEQA Guidelines §15062. However, if an objector makes a fair argument that a

1 project may have a significant negative impact on the environment, a city or county may not  
2 rely on a categorical exemption. Petitioner has made such a fair argument. Therefore, any claim  
3 of exemption by the County is invalid.

4 82. According to the Ark newspaper published on February 2, 2011, Supervisor  
5 McGlashan said that the County had calculated that an EIR would cost taxpayers \$50,000 to  
6 \$100,000, while a possible lawsuit would cost about \$5,000. This is not a valid reason for  
7 refusing to prepare an EIR.

8 83. The County's failure and refusal to complete and certify an EIR prior to adopting  
9 the Ordinance was a prejudicial abuse of discretion in that the County did not proceed in the  
10 manner required by CEQA.

11 84. Having acknowledged the environmental impacts of increased use of paper bags  
12 that will result from the Ordinance, the County had sufficient information before it to trigger the  
13 need for an EIR.

14 85. Based on the foregoing and the Objections, the Ordinance is invalid, void, or  
15 voidable.

16 86. This action is timely filed within 30 days of the filing of any Notice of  
17 Exemption or within 180 days from the date of the County's decision to carry out or approve  
18 the project. (Pub. Res. Code §21167.)

19 87. The environment will suffer irreparable harm if enforcement of the Ordinance is  
20 not enjoined by a preliminary injunction during the pendency of this action.

21 **SECOND CAUSE OF ACTION**  
22 **AGAINST RESPONDENT COUNTY OF MARIN**  
23 **(DECLARATORY RELIEF)**

24 88. Petitioner realleges and incorporates herein each and every allegation made  
25 above.

26 89. In 2006, the Legislature enacted AB 2449. (Pub. Res. Code §§42250-57.)

27 90. The Legislature declared its intent in AB 2449 as follows:

28 "It is the intent of the Legislature, in enacting Chapter 5.1 (commencing  
with section 42250) Part 3 of Division 30 of the Public Resources Code,  
to encourage the use of reusable bags by consumers and retailers and to

1 reduce the consumption of single-use bags.”

2 91. The Governor’s signing statement is part of the legislative history. The signing  
3 statement includes the following language:

4 “I am signing Assembly Bill 2449 that implements a statewide plastic  
5 bag recycling program.

6 While this bill may not go as far as some local environmental groups and  
7 cities may have hoped, this program will make progress to reduce  
8 plastics in our environment. This measure requires every retail  
9 establishment that provides its customers plastic bags to have an in store  
10 plastic bag recycling program, a public awareness program promoting  
11 bag recycling, post recycling requirements, record keeping and penalties.

12 Because this is a statewide program the bill precludes locals from  
13 implementing more stringent local requirements. The bill sunsets in six  
14 years and this will allow locals time to develop additional programs or  
15 the legislature to consider a more far reaching solution.”

16 92. AB 2449 sunsets and expires on January 1, 2013 (Pub. Res. Code §42257), one  
17 year after the Ordinance takes effect on January 1, 2012.

18 93. AB 2449 only applies to “stores.” (Pub. Res. Code §42251.) A “store” is defined  
19 as a supermarket or large retail store “that provides plastic carryout bags to its customers.”  
20 (Pub. Res. Code §42250(e).) If plastic bags are banned by local ordinances, then stores in those  
21 localities will not be subject to AB 2449 and the statewide statutory scheme of AB 2449 would  
22 be defeated.

23 94. Under AB 2449, stores that provide plastic bags to customers must install plastic  
24 bag collection bins “for the purpose of collecting and recycling plastic carryout bags.” Pub. Res.  
25 Code §42252(b). Any member of the public may use those bins to deposit any discarded plastic  
26 carryout bags. If stores in the County are prohibited from handing out plastic bags, then all such  
27 stores would be permitted to remove their plastic bag recycling bins. Such bins are used to  
28 collect and recycle all types of plastic bags, including bags that are not prohibited under the  
Ordinance, including but not limited to retail bags, produce bags, newspaper bags, and dry  
cleaning bags. The statewide statutory scheme of AB 2449 would be defeated. There would be  
no way to recycle such bags as they are not accepted in curbside recycling programs in the  
County.

1           95.     AB 2449 states that “[t]he operator of the store shall make reusable bags  
2 available to customers within the store, which may be purchased and used in lieu of using a  
3 plastic carryout bag or paper bag.” (Pub. Res. Code §42252(e).) If plastic bags are banned by  
4 local ordinances, such stores will not be subject to the state law requirement to make reusable  
5 bags available to customers in lieu of paper bags. Therefore, the declared legislative intent of  
6 AB 2449 “to encourage the use of reusable bags by consumers and retailers and to reduce the  
7 consumption of single-use bags,” including paper bags, would be defeated. Although a city or  
8 county ordinance banning plastic bags may require such stores to make reusable bags available  
9 in lieu of paper bags, there is no guarantee that a city or county will include such a requirement  
10 in an ordinance.

11           96.     Based on the foregoing, if cities and counties may enact plastic bag bans that  
12 take effect before AB 2449 sunsets on January 1, 2013, the comprehensive and integrated  
13 statewide plastics reduction, recycling, and reusable bag scheme of AB 2449 would be  
14 defeated, which would have a negative impact on the environment.

15           97.     The definition of “stores” in the Ordinance includes retail establishments that are  
16 defined as “stores” in AB 2449.

17           98.     It is the intent of the Legislature in enacting AB 2449 that it precludes and  
18 preempts local plastic bag ban ordinances that take effect prior to January 1, 2013.

19           99.     The Ordinance states as follows:

20                   “The County of Marin recognizes carry-out bag regulation as a matter of  
21                   statewide interest and concern and is best applied uniformly throughout  
22                   the state.”

23           100.    Based on the foregoing, the Ordinance is void and invalid.

24           101.    Petitioner timely asserted this ground for invalidity in its Objections attached  
25 hereto as Exhibit B and incorporated in this Second Cause of Action by reference.  
26  
27  
28



1 **PRAYER FOR RELIEF**

2 WHEREFORE, Petitioner prays for all of the following:

- 3 A. A judgment that the ordinance is void and invalid as no EIR was completed and  
4 certified.
- 5 B. A peremptory writ of mandate directing the County to set aside, void, annul, and  
6 terminate the Ordinance for failure to comply with CEQA, in accordance with Pub.  
7 Res. Code §21168.9.
- 8 C. A preliminary injunction prohibiting the County from implementing and enforcing  
9 the Ordinance during the pendency of this action.
- 10 D. A judgment and declaration that the Ordinance is preempted by AB 2449 and is  
11 therefore void and invalid.
- 12 E. Costs of this action.
- 13 F. For other such further relief as the Court may deem just and proper.

14  
15 DATED: February 21, 2011      **STEPHEN L. JOSEPH**

16  
17 

18  
19 \_\_\_\_\_  
20 Attorney for Petitioner  
21 SAVE THE PLASTIC BAG COALITION  
22  
23  
24  
25  
26  
27  
28

**VERIFICATION**

I, Stephen L. Joseph, declare:

1. I am an attorney at law duly admitted and licensed to practice in the State of California.
2. I am the attorney of record for Petitioner, SAVE THE PLASTIC BAG COALITION, in the above-entitled matter.
3. I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; REQUEST FOR PRELIMINARY INJUNCTION; REQUEST FOR DECLARATORY RELIEF and know the contents thereof.
4. I am informed and believe that the matters stated therein are true and, on that ground, I allege that the matters stated therein are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at San Francisco, California on February 21, 2011.

**STEPHEN L. JOSEPH**

